



Process loans, not paperwork.SM

January 15, 2010

Daniel R. McLaughlin
Executive Vice President
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Via Electronic Mail, PDF Attachment:

Jennifer J. Johnson, Secretary

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

**RE: Comment and Request for Extension for Compliance with Interim Final Rule
12 C.F.R. Part 226
(Regulation Z; Docket No. R-1378) Truth in Lending**

Dear Ms. Johnson,

On behalf of our members, we submit these comments on the Interim Final Rule amending Regulation Z, which implements Section 131(g) of the federal Truth-in-Lending Act ("TILA")¹, enacted by Section 404(a) of the Helping Families Save Their Homes Act on May 20, 2009 ("2009 Act").² Submitted for consideration are comments pertaining to the definition used for "the date of transfer" disclosure requirement as well as a request for an extension of time for compliance with the Interim Final Rule.

COMPANY BACKGROUND

MERSCORP, Inc. is a Delaware corporation headquartered in Reston, Virginia ("MERSCORP"). MERSCORP, an industry utility since 1997, owns and operates the MERS® System, a national electronic mortgage registry that tracks the transfer of beneficial ownership interests in and servicing rights to mortgage loans. Mortgage Electronic Registration Systems, Inc. is a wholly-owned subsidiary of MERSCORP, Inc. which serves as the mortgagee or beneficiary of record in the local land records for loans registered on the MERS® System. As mortgagee or beneficiary, it holds mortgage liens on behalf of promissory note owners. The 3,000 + Members of MERSCORP are both large and small mortgage industry entities, including mortgage originators, servicers, warehouse lenders, wholesale lenders, and investors (the "Members"). As of the date of this comment and request letter, more than 63 million residential mortgage loans are registered on the MERS® System.

¹ 15 U.S.C. §1641(g) (2009).

² Helping Families Save Their Homes Act of 2009, Public Law 111-22, 123 Stat. 1632.

CREATION OF THE MERS® INVESTORID PROGRAM

To help our Members comply with the new federal legislation “to provide consumers with information about the identity of the owner of their mortgage loan,”³ MERSCORP created the MERS® InvestorID program.⁴ This is a service to our Members whereby we can generate the TILA Section 131(g) disclosure notice on behalf of our Members. The MERS® InvestorID program allows smaller entities, who would otherwise incur a hardship in trying to comply with the new TILA Section 131(g) notice disclosure requirements, to have an established and accessible mechanism for compliance.

For the 751 members using this program, a “Mortgage Loan Transfer Notice” is automatically generated and sent to the consumer when the ownership of their loan changes and their transfer is reflected on the MERS® System. Members with their own notification solution can opt out of using MERS® InvestorID. Presently over 10,000 notices are sent out to consumers each month through the MERS® InvestorID program.

COMMENTS REGARDING BROADENING THE CURRENT DEFINITION OF “THE DATE OF TRANSFER” TO INCLUDE ALTERNATIVE DATES

Prior to the Interim Final Rule, Section 131(g) of TILA, adopted on May 20, 2009, required that the notice of new creditor include “the date of transfer.”⁵ The “date of transfer” in the original 2009 Act was not specifically defined. With the publication of the Interim Final Rule on November 20, 2009, “the date of transfer” is now exclusively defined to be “the date of acquisition recognized in the books and records of the covered person.”⁶ This has resulted in a short time frame for review, reconciliation and implementation by Members who may have been using a different date as “the date of transfer” on their disclosure notices.

We request that the Board of Governors consider broadening the current definition of “the date of transfer” to provide alternative dates that would be included in the “the date of transfer” definition, so that the definition is not restricted to be only “the date of acquisition recognized in the books and records of the covered person.” There is evidence that there are other dates that can be treated as the “date of transfer.” For example, the current process established and utilized by Members who participate in the MERS® InvestorID program is to

³ 12 C.F.R. §226 (2009).

⁴ <http://www.safeguardproperties.com/content/view/2397/106/>

⁵ 15 U.S.C. §1641(g)(1)(B).

⁶ 12 C.F.R §226.39(d)(2).

identify “the date of transfer” as the seller’s closing date. Mechanically, once the seller enters the date of transfer, recognized as the seller’s closing date, on the MERS® System and the purchaser confirms this transaction, the MERS® System generates the disclosure notices to consumers. This automated process allows the consumer to receive the notice timely with the correct identity of the new mortgage loan owner and their agents.

In practice, there should be little difference between the seller’s closing date and the purchaser’s acquisition date, as recognized in its books and records. The “date of transfer” determination, now defined in the Interim Final Rule as the purchaser’s acquisition date recognized in its books and records, may actually slow down the ability of the industry to timely send the required notices out to consumers. If the goal of the new TILA disclosure requirements is to notify consumers as soon as possible when a change in ownership of their mortgage loan occurs, as well as the identity of the new owner’s designated agents, then alternative dates should be allowed to be used. Allowing Members to continue operating under the existing MERS® InvestorID program which captures the seller’s closing date would quickly and efficiently maximize industry compliance with the Interim Final Rule.

In contrast, by not broadening the current definition of “the date of transfer” to include additional dates, the flexibility that the Board sought “to accommodate a variety of circumstances in which the acquisition could occur”⁷ is not achieved. By having a narrower definition, there is a greater likelihood that the TILA Section 131(g) disclosure notices, to begin circulation on January 19, 2010, may contain errors relating to the “the date of transfer” content portion. In order to identify “the date of transfer,” as defined now, sellers and purchasers need to reconcile first the strict acquisition date recognized in the purchaser’s books and records. This is a complex process, involving multiple parties and varied business, operational, and accounting reconciliation procedures. Also, by allowing a broader definition, with the flexibility to recognize other viable dates of acquisition, it will ward off class action lawsuits alleging whether the date in the notice complies with the narrowly defined date used in the Interim Final Rule.

MERSCORP and our Members seek to maximize compliance with the Interim Final Rule on a cost effective basis and continue providing consumers with the meaningful disclosures required by the 2009 Act. On behalf of our Members, we request that the Board of Governors consider amending the Interim Final Rule to include alternative dates in the statute’s definition of “the date of transfer.”

⁷ 12 C.F.R §226.39(d)(2).

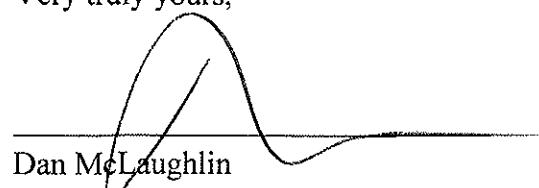
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REQUEST FOR EXTENSION OF TIME FOR COMPLIANCE WITH THE INTERIM FINAL RULE

At this time, and on behalf of our Members who use the MERS® Investor ID program, we respectfully request the Board of Governors of the Federal Reserve System to extend the mandatory January 19, 2010 compliance date to allow our Members to continue to use notices that may contain alternative dates different from “the date of transfer,” as currently defined in the Interim Final Rule. We ask for this temporary relief from compliance, at least until the Board of Governors has had an opportunity to review and consider all the comments submitted by January 19, 2010.

We can provide further information to you or members of the Federal Reserve System staff concerning the matters contained in this comment and request letter, as well as additional information pertaining to our company, our products, and how we can help facilitate the goals of the new TILA notice disclosure legislation.

Very truly yours,



Dan McLaughlin
Executive Vice President and
Product Division Manager